

Section 1

Background of the Juvenile Justice and Delinquency Prevention Act

Since its passage in 1974, the Juvenile Justice and Delinquency Prevention (JJDP) Act has changed the way states and communities deal with troubled youth. The original goals of the Act and of the Office of Juvenile Justice and Delinquency Prevention (OJJDP) were simple: to help state and local governments prevent and control juvenile delinquency and to improve the juvenile justice system. These goals were reaffirmed in the reauthorization of the Act in 2002. A second important element in the 1974 Act was to protect juveniles in the juvenile justice system from inappropriate placements and from the harm—both physical and psychological—that can occur as a result of exposure to adult inmates. Yet another important element of the JJDP Act emphasized the need for community-based treatment for juvenile offenders. In passing the JJDP Act, Congress recognized that keeping children in the community is critical to their successful treatment.

The JJDP Act, through the 2002 reauthorization, establishes four core protections with which participating States and territories must comply to receive grants¹ under the JJDP Act:

- ◆ Deinstitutionalization of status offenders (DSO).
- ◆ Separation of juveniles from adults in institutions (separation).
- ◆ Removal of juveniles from adult jails and lockups (jail removal).
- ◆ Reduction of disproportionate minority contact (DMC), where it exists.

Meeting the core protections is essential to creating a fair, consistent, and effective juvenile justice system that advances the important goals of the JJDP Act.

Each participating state must develop and implement a strategy for achieving and maintaining compliance with the four core protections as part of its annual Formula Grants State Plan. A state's level of compliance with each of the four core protections determines eligibility for its continued participation in the grant programs. For example, failure to achieve or maintain compliance, despite good faith efforts, reduces the Formula Grant to the state by 20 percent for each core requirement not met. In addition, the noncompliant state must agree to expend 50 percent of the state's allocation for that year to achieve compliance with the core requirement(s) with which it is not in compliance.

¹ Formula Grants and the Title V Community Prevention Grants are the grants that are affected by compliance with the core protections.

As part of the strategy for maintaining compliance, states must provide for an adequate system of monitoring to ensure that the core protections are met. States must visit and collect information from secure facilities to demonstrate compliance with the JJDP Act. On an annual basis, each state submits this information in the form of a Compliance Monitoring Report to OJJDP. The report provides compliance data and a detailed description of how the state is meeting the core protections. The following four sections contain information on each of the core protections.

1.1 Deinstitutionalization of Status Offenders (DSO)

The DSO provision was included in the original JJDP Act. As enacted in 1974, the Act required States to “provide within three years. . . that juveniles who are charged with or who have committed offenses that would not be criminal if committed by an adult (i.e., status offenders), shall not be placed in juvenile detention or correctional facilities, but must be placed in shelter facilities.”

A 1977 amendment to the JJDP Act expanded the DSO provision to expressly include nonoffenders such as dependent and neglected youth. It also removed the requirement that these juveniles be placed in shelter facilities, allowing state and local governments additional latitude in the placement of status offenders and nonoffenders.

In 1980, Congress specified that status offenders and nonoffenders must be removed from “secure” juvenile detention and correctional facilities. Congress also added a new jail and lockup removal requirement, which prohibits juveniles—including accused and adjudicated delinquents, status offenders, and nonoffenders—from being detained in adult jails and adult lockups. Congress further amended the JJDP Act that year to allow states to detain or confine status offenders in secure juvenile facilities for the violation of a valid court order.

As amended by the JJDP Act of 2002, the DSO requirement currently reads as follows: “juveniles who are charged with or have committed an offense that would not be criminal if committed by an adult—excluding juveniles who are charged with or who have committed a violation of section 922(x)(2) of title 18, United States Code, or of a similar state law; juveniles who are charged with or who have committed a violation of a valid court order; and juveniles who are held in accordance with the Interstate Compact on Juveniles as enacted by the State—shall not be placed in secure detention facilities or secure correctional facilities.” In addition, the 2002 Act states that “juveniles who are not charged with any offense and who are aliens or alleged to be dependent, neglected, or abused shall not be placed in secure detention facilities or secure correctional facilities.”

1.2 Separation of Juveniles From Adult Offenders (Separation)

Since the inception of the juvenile justice system, the practice of incarcerating juveniles with adult inmates has been criticized. The placement of juveniles in institutions where they are mixed with adult inmates is emotionally and physically traumatic, resulting in further victimization.

Moreover, commingling juvenile offenders with adults provides an education in crime and undercuts the intent of a separate juvenile justice system designed to rehabilitate and treat juvenile offenders.

In one of the original provisions of the JJDP Act, Congress sought to provide separation between adult inmates and juveniles in institutional settings such as jails, lockups, prisons, and other secure facilities. The JJDP Act of 2002, as amended, provides that “juveniles alleged to be or found to be delinquent,” as well as status offenders and nonoffenders, “will not be detained or confined in any institution in which they have contact with adult inmates.” The 2002 Act further requires that “there is in effect in the state a policy that requires individuals who work with both such juveniles and such adult inmates, including in collocated facilities, [to] have been trained and certified to work with juveniles.”

1.3 Removal of Juveniles From Adult Jails and Lockups (Jail Removal)

Although many of the juveniles taken into police custody and referred to the juvenile court can be released to parental custody to await court action, juveniles who have committed serious crimes and are a safety risk to the community may be removed from their homes and placed in secure facilities pending court hearings. Prior to the passage of the jail and lockup removal provision in the JJDP Act, this routinely resulted in placing juveniles in adult jails or lockups in danger of physical or emotional harm from adult prisoners. Research has shown that young people held in adult facilities were sexually assaulted five times more often than youth in juvenile facilities, assaulted by staff twice as often, and assaulted with a weapon 50 percent more often.²

In an effort to protect juveniles in custody and to meet the 1974 separation requirement of the JJDP Act, jail officials sometimes placed juveniles in solitary confinement. This practice aggravated the psychological effects of jailing and, in some cases, lead to suicide. In fact, juveniles in jails are found to commit suicide eight times more often than those in juvenile detention facilities.³ Moreover, young people in adult facilities were being deprived of educational and other services provided in juvenile facilities. For these reasons, Congress amended the JJDP Act in 1980 to include the jail and lockup removal requirement, which states that “no juvenile shall be detained or confined in any jail or lockup for adults,” a requirement reaffirmed in the JJDP Act of 2002.

² Dale Parent et al. , *Conditions of Confinement: Juvenile Detention and Corrections Facilities -Research Summary*, Office of Juvenile Justice and Delinquency Prevention (1994) and Martin Forst, Jeffrey Fagan, and T. Scott Vivona, “Youth in Prisons and Training Schools: Perceptions and Consequences of the Treatment-Custody Dichotomy,” *Juvenile & Family Court Journal*:40(1)(1989).

³ Michael G. Flaherty, *An Assessment of the National Incidence of Juvenile Suicide in Adult Jails, Lockups, and Juvenile Detention Centers*, The University of Illinois, Urbana-Champaign (1980).

The JJDP Act of 2002 provides the following exception: “juveniles who are accused of nonstatus offenses who are detained in such jail and lockup for a period not to exceed 6 hours for processing or release, while awaiting transfer to a juvenile facility, or in which period such juveniles make a court appearance, and only if such juveniles do not have contact with adult inmates.” Under special circumstances, the Act also provides for a “rural” exception of up to 48 hours (excluding Saturdays, Sundays, and legal holidays). (See section 2.4 of this *Guidance Manual* for details.)

1.4 Reduction of Disproportionate Minority Contact (DMC)

In 1988, Congress took note of this problem by focusing state attention on the phenomenon of disproportionate minority confinement in the juvenile justice system. In 1992, Congress required states to address disproportionate minority confinement as a condition for receiving 25 percent of the state’s Formula Grants program allocation, making it the fourth and final core protection of the JJDP Act. The 1992 amendments required states to determine if minority juveniles are disproportionately confined in secure detention and correctional facilities and, if so, to address any features of their juvenile justice systems that may account for the disproportionate confinement of minority juveniles. This core requirement neither required nor established numerical standards or quotas in order for a state to achieve or maintain compliance. Rather, it required states to identify whether minority juveniles are disproportionately detained or confined in secure facilities, provide a complete assessment of why disproportionate minority confinement exists, and provide an intervention plan that seeks to reduce the disproportionate confinement of minority juveniles in secure facilities.

As amended by the JJDP Act of 2002, the concept of disproportionate minority confinement has been broadened to address the disproportionate numbers of minority youth who come into contact with the juvenile justice system at any point. The 2002 Act requires states to “address juvenile delinquency prevention efforts and system improvement efforts designed to reduce, without establishing or requiring numerical standards or quotas, the disproportionate number of juvenile members of the minority groups, who come into contact with the juvenile justice system.”